

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN H. BENGE, JR.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 08-078-GMS
	:	
MICHAEL DELOY, Warden,	:	
and the ATTORNEY GENERAL OF	:	
THE STATE OF DELAWARE,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, John H. Benge, Jr., has applied for federal habeas relief, filing a habeas petition challenging his guilty plea in Superior Court to a weapons offense and two counts of criminal contempt of a protection from abuse order. The answer to the petition was originally due on May 5 (D.I. 7); respondents have obtained extensions of time to May 30, June 18, July 3, and August 1 in which to file the answer to the petition.

2. The case was reassigned to the undersigned in July. Counsel has had to draft an unanticipated supplemental memorandum in another case in addition to her substantial caseload. Although substantially complete, counsel has been unable to finalize the answer and have it reviewed by her supervisor in time to file the answer today. In light of the situation, additional time is needed. Counsel anticipates that she can complete the answer over the weekend and have the review completed on Monday for filing the next day.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' fifth request for an extension of time in this case.

5. Respondents submit that an extension of time to and including August 5, 2008, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: August 1, 2008

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: August 1, 2008

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Civ. Act. No. 08-078-GMS

ORDER

This ____ day of _____, 2008,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before August 5, 2008.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2008, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF. I also hereby certify that on August 1, 2008, I have mailed by United States Postal Service, the same document to the following non-registered participant:

John H. Bengé, Jr.
SBI No. 494395
Sussex Correctional Center
P.O. Box 500
Georgetown, DE 19947

/s/ Elizabeth R. McFarlan
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